IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.1158 of 2006

1. P.shanmuga Sundaram
2. M.Palanisamy
3. M.Ramasamy ... Appellants(Defendants)

Vs.

M.Periasamy

... Respondent(Plaintiffs)

PRAYER: Second Appeal against the Judgment and decree of the Principal District Judge, Namakkal made in A.S.No.366 of 2002 dated 30.07.2004 confirming the judgement and decree of the Additinoal District Munsif's Court, Namakkal made in O.S.No.606 of 1993 dated 31.07.1997.

For Appellants : Mr.C.Jagadesh

For Respondent : Mr.T.Dhanyakumar

J U D G M E N T

The unsuccessful defendants, who are representing themselves and representing the Villagers of Kariaperumalpudur, Sivanaikenpatty Village, Namakkal Taluk in both the Courts below are the appellants. The plaintiff filed the suit for a mandatory injunction to remove RSTU construction portion stated to have been constructed on the Panchayat road and for a declaration that neither the defendants nor the Villagers have any right to obstruct access to the road from any point at the CD level of the plaintiffs property and also for an injunction from putting up any obstruction.

2. The case of the plaintiff is that on the Eastern side of his property comprised in Survey No.291/2AA there is a Municipal road running North to South and just in front of his access to the road from his property. The defendants have put up the construction, wherein they are keeping certain articles and materials belong to the temple of the Village. Since it obstructs

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his right of free iggress and egress to his property and on the basis that the said construction has been put up on the Municipal road, which is used as a road by public, the suit was filed. The defense by the defendants was that it was not a Panchayat road but it was a Natham Puramboku and the Villagers are using it for the purpose of keeping the materials belong to the temple of the Village.

3. An Advocate Commissioner was appointed, who has submitted his report and he found that the construction, which is in question was stated to have been effected in 1993 to which the defendants have not filed any objection. Both the Trial Court as well as the First Appellate Court on appreciation of the factual position, have found that the suit property was not a Natham Purampoke, as claimed by the defendants and it is a construction put up on the Panchayat road and on that basis granted decree of mandatory injunction to remove the unauthorized construction.

4. While considering the averment made on behalf of the defendants that the plaintiff being one of the Villagers has also paid subscription of Rs.100/- for maintenance of the Village and it is based on the said subscriptions, the amounts are spent for Temple purpose including to putting up construction and therefore, the plaintiff is estopped from raising such an issue about unauthorized construction, the Trial Court as well as the Appellate Court has come to a conclusion that even though the defendants have stated that the plaintiff paid subscription of Rs.100/-, no record has been produced before the Court to show to that effect and on that basis the principle of estoppel was turned down. In any event, it remains the fact that even assuming that the plaintiff has paid such subscription for the purpose of Village, it does not mean that the plaintiff loses his right of preventing even public from putting any obstruction on the road, especially the same is in front of his house. Therefore, I do not think that the principle of estoppel will apply on the facts and circumstances of the case.

5. The reliance placed on by the learned counsel for the appellants on the judgement rendered by this Court in Muthammal (died) and others Vs. State of Tamil Nadu and another reported in 2006(3) MLJ 216 to the effect that if the disputed property is a grama natham, there was no question of issuance of any patty or entry made in Adangal etc. and the first occupier is entitled as a owner of the portion and in such circumstances, the decision arrived at by the Courts below ,that no evidence has been produced by the defendants to show that the place is a grama natham, cannot be sustained, is not acceptable.

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6. As rightly pointed out by the Courts below, the P.W.2, who is the adjacent owner has in fact been examined, who has produced the chitta and adangal in respect of carttrack, which according to him means the Panchayat road on which the disputed construction has been put up and it was not even the case of the defendants, while cross examining the said P.W.2 that it was not a carttrack and it was a Natham puramboke.

7. Even in cases where there was an assignment of a portion used as a public road, this Court has held that such assignment will be only against the public interest and the plaintiff, who is owner of the property facing the road, which has been assigned has right to approach the Civil Court, ignoring the assignment for the purpose of removal construction either individually or by seeking assistance of local authority. That was the judgement rendered in K.Mani Vs.L.Indumathi reported in 1998(2) MLJ 62 wherein this Court has held as follows:

> "22. Learned counsel for the appellant contended that subsequent to the institution of the suit, government has assigned the land in favour of the defendant as per order of assignment dated 13.02.1992. According to him, in view of the subsequent event, he is entitled to hold on to the property as owner. I do not think this new contention can also prevail. If the law prohibits the Government and the local authorities from causing obstruction to the Highway or to the public street, the assignment of that land to a private individual also has to fail for the same reason. The interest of the general public cannot be taken away by issuing an assignment order. If the obstruction which was in existence still continues, the plaintiff can ignore the assignment and remove the obstruction caused either individually or by seeking the assistance of the Local Authority which is in the position of a Trustee so far as the general public is concerned. Any order of assignment will be in derogation of that right and the same cannot be given effect to, when it affects the right of a citizen. When the plaintiff has a right of access from any portion of the highway or public street, the Government is also bound to preserve that right as a custodian of Government lands, especially public streets."

8. While considering about the right of the plaintiff to establish the same through Court, who have access to the road way from all points on the boundary on their land ,this Court while considering the same in Bharathamatha Desiya Sangam, Madhavaram and another Vs. Roja Sundaram and others reported in AIR 1987 Madras 183 has held:

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"Owners of houses of premises abutting a roadway are entitled to have access to that roadway from all points on the boundary of their land and if any obstruction is caused over the road margin securing such access, the person entitled to have such access can certainly enforce that right."

9. Even assuming that in between the construction of the plaintiff's house and the alleged construction put by the defendants on the Panchayat road there is a space, that cannot be put against the respondents as a ground for declining to grant him relief especially on the facts and circumstances wherein, it has been established that the offending construction has been put up by the defendants on the Panchayat road with a clear finding that it has not been proved to be a Natham Puramboke.

10. Therefore, the contention raised on behalf of the defendants as if there is a gap between the house of the plaintiff and the passage and therefore, the construction on the passage would not affect the plaintiff is unsustainable as correctly found by both the Courts below. In view of the same, there is absolutely no question of law involved much less substantial question of law and the Second Appeal fails and the same is dismissed. No Costs.

nbj

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal District Judge, Namakkal.

2. The Additional District Judge, Namakkal.

+ 1 cc to Mr. T. Dhanyakumar, Advocate, SR No.20215

+ 1 cc to Mr. C. Jagadish, Advocate, SR No.20732

Order in
S.A.No.1158 of 2006

VC(CO)
SR/19.4.2007

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